CONTRACTS: REVOCABILITY OF UNILATERAL OFFERS—A bare irrevocable offer unsupported by consideration is a legal impossibility.[1] Yet in *Roth v. Moeller*[2] the court lays down the dictum that one who makes an offer contemplating a unilateral contract cannot revoke his offer when the offeree's partial performance has caused some expense. Such performance, it is said, implies a promise that a revocation will not be made. In *Houston v. Williams*[3] a similar case, it is apparently held that the offer to enter into a unilateral contract is revocable at any time before complete performance of the act of acceptance. Both cases were based upon the type of unilateral offer common to brokerage agreements giving an exclusive sales agency.[4]

The conflict of these cases illustrates the judicial confusion concerning the making of unilateral contracts. Many decisions on this subject conflicting with the recognized rules are based on precedents supported neither by reason nor authority.[5] Other such decisions arise from precedents marked by conflicting terminology.[6] More confusion, however, arises from the disregard of fundamental rules of law in an effort to avoid hardships to the offeree[7] who has commenced performance. When the offeree's performance causes him no expense or hardship, all courts allow a revocation

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[1] Cf. the famous statement of Langdell, "Summary of Law of Contracts", 178, par. 4.

[2] (March 29, 1921) 61 Cal. Dec. 444, 197 Pac. 62.

[3] (June 17, 1921) 35 Cal. App. Dec. 470, 200 Pac. 55.

[4] For cases on performance of brokers' agreements, see Roth v. Thompson (1919) 40 Cal. App. 208. 108 Pac. 656; California Land Security Company v. Ritchie (1919) 40 Cal. App. 246, 180 Pac. 625; Ropes v. John Rosenfeld's Sons (1905) 145 Cal. 671, 79 Pac. 354; Hall v. Olsen (1911) 58 Ore. 464. 114 Pac. 638; Schoenman v. Whitt (1908) 136 Wis. 332, 117 N. W. 851, 19 L. R. A. (N. S.) 598 and note.

[5] Without citing authority, 1 Parsons "Contracts", *453, states: "If the promisee begins to do the thing requested in a way which binds him to complete it, here is mutuality." This statement is cited in Plumb v. Campbell (1888) 129 Ill. 101, 18 N. E. 790, to support the rule that part performance of a unilateral contract makes the offer irrevocable although in the case the offeree was not bound in any way by his partial performance to complete the acts requested. The above case is then followed with approval and quoted verbatim in Miller v. Moffat (1910) 153 Ill. App. 1, as being a conclusive rule of law.

[6] See Chambers v. Farnham (1920) 182 Cal. 191, 187 Pac. 732. Here Olney, J., in concurring says, "Instances are not uncommon of contracts which when made are purely unilateral and under which one of the parties assumes no obligation whatever until the happening of some event entirely within the control of the other party." For an example, the familiar case of an offer to sell such goods as the vendee may order is given There may or may not have been a contract here. If consideration was given to hold the offer open an option existed and the language used is accurate. But if no consideration was given, no contract existed until the offeree did "that act wholly within his control", i.e., gave his order. If the latter interpretation be given, the language is misleading because the Court is illustrating an offer to enter into a bilateral contract and not a unilateral contract. If an attempted agreement bilateral in form is contemplated, such an agreement would probably be classified as an illusory contract.

[7] I. Maurice Wormser, "True Conception of Unilateral Contracts", 26 Yale Law Journal, 136.

of the offer at any time prior to complete performance. When, however, this performance requires expenditures before its completion, the fear of injuring the offeree by allowing revocation after part performance has apparently led some courts to the conclusion that an offeror cannot revoke, although he has not promised to keep his offer open.

Following a suggestion in a California case,[8] one writer has proposed that when an offer can be accepted only by acts requiring time and expense, the offeree's part performance should make the offer irrevocable, unless the power of revocation has been reserved.[9] The operation of this rule he limits to cases where continued performance will not enhance damages. Other jurists suggest that a promise be implied to keep the offer open for a reasonable time, provided performance is begun immediately;[10] that is, an estoppel against revocation arises when performance begins.[11]

Such a rule eliminates no risk of hardship, since the offeree may withdraw from the contract when he pleases, while the offeror is left bound and without remedy. At present, when an offer is revoked, the offeree can recover the reasonable value of his services to the offeror. It would seem best to follow the suggestion that if

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[8] Los Angeles Traction Company v. Wilshire (1902) 135 Cal. 654, 67 Pac. 1086. The case is based on Blumenthal v. Woodall (1891) 89 Cal. 251. 26 Pac. 906, 3 Cal. Unr. 311, which was decided on entirely different grounds. In the Blumenthal case, the broker's authorization was connected with an interest in the subject-matter of the contract. The broker therefore had a right to accept despite the revocation of the owner. The decision, however, was apparently rendered on the ground that the offeree's substantial performance had completed the unilateral contract and made the offer irrevocable. The Wilshire case has been severely criticized by Professor Ashley, infra, n. 11. It has been followed in California only in cases involving bilateral contracts.

[9] Arthur L. Corbin, "Offer, Acceptance, and Some of the Resulting Legal Relations," 26 Yale Law Journal, 169. See also Corbin's edition of Anson on Contracts, 53, n. 3. The cases cited by Professor Corbin are for the most part reward cases in which acceptance has been prevented by the act of the offeror. Louisville & Nashville Railroad Company v. Goodnight (1874) 10 Bush (Ky.) 552; Stephens v. Brooks (1867) 2 Bush (Ky.) 137; Stone v. Dysert (1878) 20 Kans. 123; Zwolanek v. Baker Manufacturing Company (1912) 150 Wis. 517, 137 N. W. 769; Williams v. United States (1876) 12 Ct. Cl. 192. *Contra:* Biggers v. Owens (1888) 79 Ga. 193. Newspaper subscription cases are also cited and seem more directly in point. Mooney v Daily News of Minneapolis (1911) 116 Minn. 212, 133 N. W. 573; Hertz v. Montgomery Publishing Company (1913) 9 Ala. App. 178, 62 So. 564. Mr. Corbin's view is not without some legal support, even though such precedents represent dicta or at best a weak minority rule. See Sill v. Ceschi (1914) 167 Cal. 698, 140 Pac. 949; Underwood Typewriter Company v. Century Realty Company (1909) 220 Mo. 522, 119 S. W. 400; School Directors of Kansas City v. Stocking (1897) 138 Mo. 672, 40 S. W. 656, 37 L. R. A. 406; Braniff v. Baier (1910) 101 Kans. 117, 165 Pac. 816; Brackenbury v. Hodgkin (1917) 116 Me. 339, 102 Atl. 106.

[10] D. O. McGoveney, "Irrevocable Offers," 27 Harvard Law Review, 644. Professor McGoveney seems to cite substantially the same cases in support of his theory of collateral contracts that Mr. Corbin uses in his thesis. See cases named, supra, n. 9.

[11] Clarence D. Ashley, "Offers Calling for a Consideration Other Than a Counter Promise," 23 Harvard Law Review, 159; Ashley on Contracts, 78-88.

possible the contract should be interpreted as bilateral; if plainly unilateral, then the established rules of law should govern.[12]

R. L. H. Jr.

LABOR LAW: STRIKES: BOYCOTTS: PICKETING—Labor litigation during the past year has been prolific, reflecting, for the most part, the conflict engendered by the nation-wide open-shop campaign. On the legal side, as on the industrial, labor has come off emphatically second best. Outstanding is the case of Duplex Printing Company v. Deering,[1] which, by a strained and illiberal interpretation of the Clayton Act,[2] denies to labor the weapon of the secondary boycott. The vicious influence of another decision of the Supreme Court, of several years standing,[3] is clearly traceable in several holdings extending the doctrine of Lumley v. Gye[4] so as to render tortuous the procurement of a strike of employees working under a contract of employment, even though the contract by its own terms is terminable at the will of either party.[5] Another Federal case is important for a holding that interference, by strike or otherwise, with the manufacturing of goods intended for an interstate market is not an interference with interstate commerce.[6] In the state courts most of the cases have dealt with the question of picketing, and the courts have almost uniformly granted injunctions against the picketing involved. In many instances the facts show clearly that the picketing enjoined was violent and physically intimidating in nature.[7] Several New York dicta, however, deny the possibility of peaceful picketing,[8] although the established New York rule holds otherwise.[9] On the other hand, these dicta are more than counterbalanced by a square holding in the same jurisdiction that picketing is not *per se* unlawful.[10] In line with the prevailing retrogressive tendency are cases holding unjustifiable strikes to compel an employer to enter into a contract

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[12] Williston on Contracts (1920 ed.) 60, and cases cited there.

[1] (1920) 254 U. S. 443, 65 L. Ed. 176, 41 Sup. Ct. Rep. 172.

[2] 38 Stat. at L. 730, Comp. Stat. § 8835a, 9 Fed. Stat. Anno. (2d ed.) p. 730.

[3] Hitchman Coal & Coke Co. v. Mitchell (1917) 245 U. S. 229, 62 L. Ed. 260, 39 Sup. Ct. 65; L. R. A. 1918C 497, Ann. Cas. 1918B 461.

[4] (1853) 2 E & B 216, 22 L. J. Q. B. 463.

[5] Floersheim v. Schlesinger (1921) 187 N. Y. S. 891; McMichael v. Atlanta Envelope Co. (1921) 108 S. E. 226. (Ga.).

[6] Gable v. Vonnegut (1921) 274 Fed. 66. This modifies the rule as laid down in Loewe v. Lawlor (1908) 208 U. S. 274, 52 L. Ed. 488, 28 Sup. Ct. Rep. 301.

[7] Skolny v. Hillman (1921) 114 N. Y. Misc. Rep. 571, 187 N. Y. S. 706; Grand Shoe Co. v. Childrens' Shoe Workers' Union (1920) 187 N. Y. S. 886; Jaeckel v. Kaufman (1920) 187 N. Y. S. 889; Benito Rovira Co. v. Yampolsky (1921) 187 N. Y. S. 894; United Traction Co. v. Droogan (1921) 189 N. Y. S. 39; Marks Anaheim Inc. v. Hillman (1921) 189 N. Y. S. 369.

[8] Schwartz & Jaffee v. Hillman (1921) 189 N. Y. S. 21; Pre'Catalan, Inc. v. International F. of W. (1921) 189 N. Y. S. 29

[9] Martin, Modern Law of Labor Unions, p. 234.

[10] Piermont v. Schlesinger (1921) 188 N. Y. S. 35.